TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1937

No. 511

THE NEW NEGRO ALLIANCE ET AL.,
PETITIONERS,

vs.

SANITARY GROCERY CO., INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI FILED OCTOBER 18, 1937.

CERTIORARI GRANTED NOVEMBER 22, 1937.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 511

THE NEW NEGRO ALLIANCE ET AL.,
PETITIONERS,

vs.

SANITARY GROCERY CO., INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 18, 1938.

—3504

[fol. 1] [Captions omitted]

IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Equity No. 61165

SANITARY GROCERY COMPANY, INC., a Corporation, Plaintiff,

vs.

THE NEW NEGRO ALLIANCE, a Corporation, and WILLIAM H. HASTIE, Individually and as Administrator and as a Member of the New Negro Alliance, a Corporation, and Harry A. Honesty, Individually and as Deputy Administrator and as a Member of the New Negro Alliance, a Corporation, Defendants

BILL OF COMPLAINT—Filed April 10, 1936

[fol. 2] To the Honorable, the Supreme Court of the District of Columbia, Holding an Equity Court:

Your Petitioner, Sanitary Grocery Company, Inc., a corporation, respectfully represents unto the Court as follows:

1. That it is a corporation organized and existing under and by virtue of the laws of the State of Delaware, and doing business in, and having its main office in, the District of Columbia, and brings this suit in its own behalf.

2. That the defendant, The New Negro Alliance, is a corporation organized and existing under and by virtue of the laws of the District of Columbia and is sued in its own right; that the defendant, William H. Hastie, is administrator of the said New Negro Alliance, a corporation, and is sued in his own right and as administrator of the said New Negro Alliance, a corporation, whose members are too numerous to be sued individually; that defendant, Harry A. Honesty, is Deputy Administrator of the said New Negro Alliance, a corporation, and is sued in his own right and as the Deputy Administrator of the New Negro Alliance; that the latter two named Defendants are of full age and are residents of the District of Columbia.

3. That plaintiff now is, and for a long time has been, successfully engaged in the business of operating stores for

the retail sale of groceries, vegetables, meats, fruits, and other products usually sold in grocery stores and has from time to time increased the number of such stores and now owns and operates in the District of Columbia, to wit, 255 retail stores at which such merchandise is sold, such stores being operated under the name of "Sanitary"; "Sanitary Grocery Company" "Sanitary Grocery Company, Inc."; or "Piggly Wiggly"; Plaintiff also owns and operates one warehouse and one bakery, located in the District of Columbia, that Plaintiff employs a large number of persons in its business, including both whites and negroes.

4. That, after extensive advertising, plaintiff opened on the morning of Friday, April the third, 1936, a new retail grocery and meat market at 1936 Eleventh Street, Northwest, in the District of Columbia. The personnel in said new store consisting of a manager and clerks, who were transferred from a closed store in the immediate neighborhood and who have a wide acquaintance with the trade in [fol. 3] the vicinity of the new and closed stores; plaintiff has done and is doing a large volume of business in its other stores and has built up and enjoys a valuable good will resulting from the successful prosecution of its business.

5. That defendant corporation, The New Negro Alliance is composed of colored persons, its purpose as stated in its Certificate of Incorporation, filed with the Recorder of Deeds of the District of Columbia, on, to wit, November 18th, 1933, being for the mutual improvement of its members and the promotion of civic, educational, benevolent and charitable enterprises.

6. That the Defendants have heretofore made arbitrary and summary demands upon the Plaintiff Corporation, through its officers, agents and employees, that it engage and employ colored persons in managerial and sales positions in the said new store at 1936 Eleventh Street, Northwest and various other of Plaintiff's stores. It is essential and necessary for the proper conduct of Plaintiff's business that it employ experienced employees in the said store so located at 1936 Eleventh Street and in its several other stores in managerial and sales positions, and the arbitrary demands as aforesaid, if complied with, will require plaintiff to discharge its said white employees and to replace them with colored employees. It is imperative that Plain-

tiff in the operation of its business shall have the free and unhampered selection and control of persons employed by it without interference by the Defendants or any other persons or organizations whatsoever.

7. That the Defendants have written letters to the Plaintiff in which are contained threats of boycott and ruination of the Plaintiff's business, and notices that by means of announcements, meetings, and advertising, the defendants will circulate statements that Plaintiff is unfair to colored people and to the colored race and that the Plaintiff does not employ colored employees, (even though this is contrary to fact), unless it accedes to the said arbitrary demands as aforesaid of the said defendants.

8. The Plaintiff Corporation has not acceded to, and should not be called upon to accede to the demands of the defendants.

9. Upon the refusal of the Plaintiff to comply with the demands as hereinbefore set forth, the Defendants, their members, representatives, officers, agents, servants, and [fol. 4] employees have unlawfully conspired with each other to picket, patrol, boycott and ruin the Plaintiff's business in said stores, and particularly in the store located at 1936 Eleventh Street, Northwest; the said defendants have, in an effort to fulfill their threats of coercion and intimidation, actually have caused the said store to be picketed or patrolled during hours of business of the plaintiff, by their members, representatives, officers, agents, servants, and employees; said persons so picketing or patrolling carrying large placards containing legible printing charging the Plaintiff Corporation with being unfair to negroes. The said signs or placards containing the following language, to wit: "Do Your Part! Buy Where You Can Work! No Negroes Employed Here!", for the purpose of intimidating and coercing prospective customers from entering the Plaintiff's store until such time as the Plaintiff Corporation accedes to the aforesaid demands of the Defendants. Said defendants, their pickets or patrols or some of them have jostled and collided with persons in front of the said store and have physically hindered, obstructed, interfered with, delayed, molested, and harassed persons desiring to enter the place of business of the Plaintiff Corporation; said pickets, or some of them, have attempted to dissuade and

prevent persons from entering plaintiff's place of business; said defendants, their pickets or patrols are disorderly while picketing or patrolling, and attract crowds to gather in front of said store, and encourage the crowds or members thereof to become disorderly, and to harass, and otherwise annoy, interfere with and attempt to dissuade, and to prevent persons from entering the place of business of the plaintiff, the disorder thereby preventing the proper conduct of and operation of the plaintiff's business. Defendants have threatened to use similar tactics of picketing and patrolling as aforesaid in front of the several other stores of the plaintiff.

As evidence of the widespread and concerted action planned by the Defendants herein, they have caused to be placed or have permitted to appear in the Washington Tribune, a semi-weekly publication of general circulation for negroes, located at 920 U Street, Northwest, in its edition of Friday, March 27, 1936, and appearing in large black type on the front and second pages, the following statements:

[fol. 5] "Says Sanitary is Firing Negro Personnel—Organization Plans to Picket Unless Demands are Met."

Prompt and speedy action taken by the New Negro Alliance, meeting in executive session on Thursday evening, at the offices of the buy-where-you-can-work organization, 1333 R Street, Northwest, indicated that the group is preparing to set in motion a boycott of a series of Sanitary Stores located in colored neighborhoods, should the chain store firm fail to show intentions of rehiring colored clerks, claimed to have been displaced, and hire colored clerks in new stores planned in colored belts in the city.

Many members of the executive counsel of the New Negro Alliance reported at the meeting, complaints by consumers, because of dismissal of colored clerks at a branch of the Sanitary Store Company, located on T Street, Northwest, near Seventh. Other consumers' complaints were reported from the Forty-fourth and Sheriff Road, Northeast, area; Twelfth and T Streets, Northwest, section; and Vermont and S Street, Northwest neighborhood. In all of these locations are branches of the Sanitary Grocery chain.

Though expecting a satisfactory reply and an acceptable adjustment of the employment of colored clerks in branch stores, located in colored sections, the New Negro Alliance

voted immediate steps to inform its many members and the complaining consumers of failure of proceedings which would bring about active boycott of the series of chain stores of the firm under fire. Saturday, April 4, the date of the regular public meeting of the buy-where-you-can-work organization, has been set as the limit for satisfactory adjustment."

And appearing in the said Washington Tribune, in its edition dated April 3rd, 1936, Friday, the defendants caused or permitted to be placed on the First and Second pages, the following:

"Sanitary Store Picketed by Alliance for Refusal to Employ Negro Clerks.

"Manager of Chain States that Firm Does Not Contemplate Hiring Colored.

[fol. 6] "Housewives Being Canvassed by Group Buy-Where-You-Can-Work Campaign Carried to Residents in Neighborhood."

"Pickets carrying signs reading "Will Negroes Work Here?" took positions in front of a Sanitary Grocery Store, in the 1900 block (Ours, meaning plaintiff's store located at 1936 Eleventh Street, Northwest) of Eleventh Street, Northwest, Wednesday afternoon when the management of the grocery chain stated that no Negroes would be employed in the store when it opens on Saturday.

The campaign to not patronize the store is being sponsored by the New Negro Alliance.

Conducting Canvas

The Alliance is conducting a house-to-house canvas in the vicinity of the new store and residents in the neighborhood are being urged to "buy where you can work."

In a recent statement the Alliance said that the Sanitary Store at Sixty and T Streets, Northwest formerly employed Negroes as clerks, but there are no Negro clerks there now. The statement read. Dozens of Negro-supported Sanitary stores have never employed Negro clerks. Among these are the stores at Eleventh and Kenyon Streets, Twelfth and T Streets and Vermont Avenue and S Street.

Students to Aid

Creston Honesty and James Leftwish were the pickets on the opening day of the campaign. Students from the

Howard University School of Pharmacy will work as pickets the rest of the week. The Alliance is headed by William Hastie, member of the District bar and assistant solicitor in the Interior Department.

In explaining the campaign the Alliance stated that

"For two years the Negro Alliance has been trying to get Negro clerks in the Sanitary Stores. During our campaign with another chain store sometime ago the Sanitary Company employed a few Negro clerks, here and there. Though we have repeatedly requested this company to employ additional clerks, not only have they failed to do this but they have failed even to maintain the small number of jobs formerly made available for Negroes.

[fol. 7] "The present campaign aims to deal with the new store at E-veneenth and U Streets, and the neighboring stores at Eleventh and T Streets and Vermont Avenue, and Eleventh Street, Northwest, because they are a group within a single neighborhood. The Sixth and T Streets store is included because it is a large and important store which formerly employed Negroes but does not do so now. The Eleventh and Kenyon Store represents a neighborhood project of the people in that area which was enthusiastically undertaken last fall and should be revived now that the spring season makes greater activity possible."

And appearing in the said Washington Tribune under date of April 7th, 1936, the defendants caused or permitted to be placed, an article appearing on the first and third pages, the following:

"Warns Against White Aproned "Errand" Boys.

"No Let Up in Campaign Against Chain that Refuses Clerk Jobs."

At the regular public meeting of the New Negro Alliance, held in the assembly room of the Y. M. C. A., on Saturday evening, William Hastie, administrator of the buy-where-you-can-work organization, warned against consumers regarding "errand boys in white aprons" as clerks during the last few days in branch stores of the Sanitary Grocery Store Company now under ban.

He indicated that an investigation by the Alliance would determine the true status of the "clerks" in the chain stores

at T Street, between Sixth and Seventh Streets, Northwest, and at Vermont Avenue and S Street, Northwest.

Gratified at Response

Though gratified with general public response to the picketing of the branch of the Sanitary Store, located in 1900 block of Eleventh Street, Northwest, the sentiment at the meeting showed every indication of no letup in the active campaign of the chain stores located in colored neighborhoods, until the requests by the New Negro Alliance for colored clerks has been fully met by Sanitary Grocery store officials.

[fol. 8]

Shortage of Man Power Seen

Pickets were stationed in front of the chain store branch in 1900 block of Eleventh Street, Northwest, Wednesday afternoon, bearing signs reading "Will Negroes Work Here?" The store opened to the public on Saturday. A total of fifteen persons, including several prominent women picketed during the first three days of the campaign. On Saturday, the signs carried by the pickets read "Buy Where You Can Work—No Negroes Employed In This Store—Stay Out Until Negro Clerks are Hired." It was reported that a "comparative few thoughtless persons" made purchases at the new chain store.

Because all of the active members of the New Negro Alliance or persons interested in the cause are employed during the day, it was decided that early evening convassing of neighborhoods—with stores under ban would continue. Pickets would be placed in front of branches of the Sanitary chain on Saturdays, when the buying at the stores is calculated as being at peake.

Murray Warns Against Action.

George H. Murray, instructor at Armstrong High School, and prominent civic worker, was the guest speaker at the public meeting of the Negro Alliance.

Introduced to the audience by George Rycraw, chairman of the organization's public relations committee, Mr. Murray warned that "minority groups cannot resort to direct action to get desired results." He urged indirect action and said, "In business, the approach to economic solutions must be peaceful."

The speaker regarded the activities of the buy-where-you-can-work organization as "not peaceful, but hostile." He pointed out that "the reversal of the boycott by the Alliance would squeeze the life blood of the Negro."

Cites Employer's Right

Mr. Murray concluded his speech by saying that the employer has the right to hire whom he pleases in his establishment.

During the discussion which followed the educator's address, it was brought out that all initial approaches made by the New Negro Alliance, though based upon astonishing results of surveys by the organization, were peaceful; [fol. 9] that "hostilities" set in after peaceful negotiations failed; that consumers have the right to say who shall be employed in branches of chain stores they support; that the New Negro Alliance represents effective consumers' organization and that a branch store employing colored clerks represents a "setting up of a Negro business" as it is the will of the Negro consumers that colored persons be employed as clerks."

The attached photographs which were taken in front of premises 1936 Eleventh Street, on Saturday, April 4th, 1936, shows the picketing which is being carried on by the defendant. Plaintiff exhibits 1, 2, 3, & 4.

10. That the condition created by Defendants herein has caused to exist a situation which will continue to exist until such time as Plaintiff corporation accedes to the demands, as aforesaid, of defendants, and which is and which will continue to be dangerous to the life and health of persons in the public highways, to property thereon, and to the plaintiff's employees, its property and business, to the irreparable injury of life, health, and property.

11. That plaintiff further shows to this Honorable Court that there is not pending between the plaintiff corporation and the defendants herein, or any of them, or between the plaintiff corporation and any other person or persons or organization or groups of persons, any dispute concerning terms or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, and the relation of employer

and employees does not exist between the plaintiff corporation and defendants or any of them; that defendants are not nor are any of them, an organization of employees; that the defendants are not engaged in competitive business with the plaintiff and that the officers, members, or representatives of defendants are not engaged in the same business or occupation of the plaintiff or its employees.

12. That the subject matter of this Bill of Complaint does not involve a labor dispute within the meaning and provisions of any Federal or local statutes made and provided relative to such labor disputes.

13. That the plaintiff corporation herein apprehends and fears that unless, restrained and enjoined by this Honor-
[fol. 10] able Court, the threatened acts of violence hereinabove referred to, will be executed and that other acts of violence will occur, and that the unjust and unlawful acts of the several defendants herein referred to, will be continued and aggravated, with consequent demoralization of the business of the plaintiff and of its employees; that this plaintiff further shows to this Honorable Court that the various acts of the defendants herein above referred to are unlawful and illegal and violative of constitutional guarantees of the plaintiff, and constitute a combination and conspiracy in restraint of trade and commerce in the District of Columbia. The Plaintiff further shows to the Court that unless restrained and enjoined by this Honorable Court, the business and good will of the plaintiff's business will be destroyed and its investment therein wholly lost, and that its customers and patrons and prospective customers and patrons will be so deferred and intimidated as to cause them to refrain from or to cease patronizing the plaintiff corporation and the plaintiffs employees and such other persons as the plaintiff may from time to time desire to employ will be prevented, deterred, and hindered from entering into or continuing in employment by the plaintiff all to the irreparable injury and damage of the plaintiff.

The premises considered, and the plaintiff being threatened with immediate and irreparable damage, loss and injury, and being without plain adequate and complete remedy by law, accordingly prays:

1. That a writ of subpoena issue against said defendants named herein and each of them, requiring them by

a day certain, to appear herein and answer the exigencies of this Bill of Complaint.

2. That a temporary restraining order issue, restraining the defendants, their members, officers, agents, servants, and employees, from

(a) Picketing or patrolling, or causing to be picketed or patrolled any and all of the premises occupied by plaintiff.

(b) Boycotting, or causing or urging other persons or organizations to boycott or to refrain from transacting business with plaintiff.

(c) Announcing, advertising or in any manner calling attention to the contention that the plaintiff is unfair to colored people or to the colored race.

[fol. 11] (d) In any manner, whether by inducements, threats, intimidation or by the actual or threatened use of physical force, dissuading, preventing, or hindering persons who desire or intend to enter the places of business or any of them of the plaintiff, from entering into the same, or from transacting business with the plaintiff.

(e) Destroying or damaging, or threatening to destroy or damage any of the physical property of the plaintiff.

(f) Doing or threatening to do any or all of the foregoing acts or things, whether individually or in concert with each other, or with others, and from aiding, abetting, assisting, or advising other persons to do or threaten to do said acts or any of them.

3. That the defendants, their members, officers, agents, servants, and employees be restrained and enjoined, pendente lite and permanently, from

(a) Picketing or patrolling, or causing to be picketed or patrolled any and all of the premises occupied by plaintiff.

(b) Boycotting, or causing or urging other persons or organizations to boycott or to refrain from transacting business with plaintiff.

(c) Announcing, advertising, or in any manner calling attention to the contention that the plaintiff is unfair to colored people or to the colored race.

(d) In any manner, whether by inducements, threats, intimidation or by the actual or threatened use of physical force, dissuading, preventing, or hindering persons who desire or intend to enter the places of business or any of them of the plaintiff, from entering into the same, or from transacting business with the plaintiff.

(e) Destroying or damaging, or threatening to destroy or damage any of the physical property of the plaintiff.

(f) Doing or threatening to do any or all of the foregoing acts or things, whether individually or in concert with each other, or with others, and from aiding, abetting, assisting, or advising other persons to do or threaten to do said acts or any of them.

4. That such rule or rules to show cause issue as may be requisite.

5. And that plaintiff may have such other and further [fol. 12] relief as the nature of the case may require and to this Honorable Court may seem meet and proper.

Sanitary Grocery Company, Inc., by Mack L. Langford, Vice Pres. A. Coulter Wells, Attorney for Plaintiff.

Duly sworn to by Mack L. Langford. Jurat omitted in printing.

(Here follow two photostats, side folios 13 and 14.)

Exhibits to bill of complaint


BEV

[fol. 15] IN UNITED STATES DISTRICT COURT

ANSWER—Filed April 15, 1936

* * * * * * *

Come now the three defendants above named and for their joint and several answers to the plaintiff's bill in the above encaptioned cause say:

1. Defendants have no knowledge of the corporate status, domicile and principal place of business of the plaintiff and require strict proof thereof as may be material to this cause.

2. Defendants admit the allegations of fact contained in paragraph 2 of plaintiff's bill.

3. Defendants admit that plaintiff is engaged in the retail grocery business in the District of Columbia and that both whites and Negroes are employed in that business; but defendants have no knowledge of the detailed facts concerning plaintiff's business as further alleged in paragraph 3 of plaintiff's bill and require strict proof thereof as may be material to this cause.

4. Defendants admit that on Friday, April 3, 1936, defendant opened a retail grocery store at 1936 Eleventh Street, Northwest, in the District of Columbia and that the manager of said store is an employee transferred from a closed store in the immediate neighborhood. Upon information and belief the defendants deny that the clerks in the new store were transferred from said closed store. Defendants have no knowledge of the other matters of fact pleaded in paragraph 4 of plaintiff's bill and require strict proof thereof as may be material to this cause.

5. The provisions of the Certificate of Incorporation of the New Negro Alliance are a matter of public record in the District of Columbia.

6. Defendants deny the allegations of fact contained in paragraph 6 of plaintiff's bill and say that from time to time the defendant New Negro Alliance and the defendants Hastie and Honesty, both acting as agents of the defendant corporation and in no other capacity, have requested that the plaintiff in the regular course of personnel changes in

its retail stores give employment to Negroes as clerks, particularly in those stores patronized largely by colored people. Defendants further say that they have not requested the discharge of any white employees of the plaintiff nor have they sought any action by the plaintiff which would require the discharge of any white employees.

7. Defendants deny the allegations in paragraph 7 of plaintiff's bill and says that the only representations which the defendant corporation or any of its authorized agents have threatened to make are true representations that named stores of the defendant do not employ Negroes as sales persons, and that the only action threatened by the defendant corporation or any of its authorized agents has been the lawful and peaceable persuasion of members of the community to withhold patronage from particular stores after the plaintiff has refused even to acknowledge requests that it adopt a policy of employing Negro clerks in such stores in the regular course of personnel changes.

[fol. 16] 8. Defendants admit that plaintiff has not employed any Negro clerks in its new store as requested by the defendant corporation. Defendants say further that such further allegations as are contained in paragraph 8 of the plaintiff's bill are not properly pleaded allegations of fact and that the defendants ought not be required to make answer thereto.

9. Defendants admit that defendant corporation did on Saturday, April 4, 1936, but at no other time cause the store of plaintiff at 1936 Eleventh Street, Northwest, to be continuously picketed during that day by a single person carrying a placard exhibiting the wording alleged by the plaintiff. Defendants admit that the defendant corporation has heretofore and prior to the acts herein complained of picketed or expressed the intention of picketing two other stores of the plaintiff. Defendants admit that the pictures which are exhibits to plaintiff's bill accurately depict the conditions in the vicinity of plaintiff's store throughout the period of picketing on April 4, 1936, and the manner in which the agents of defendant corporation conducted themselves during said picket. The defendants deny the other allegations of fact contained in paragraph 9 of plaintiff's bill and say that the facts are as follows:

The information conveyed by the placard borne as aforesaid was wholly true and was not intended and did not in

fact coerce or intimidate customers of the plaintiff. None of the defendants nor any picket or other person acting on behalf of any of the defendants has physically hindered, obstructed, interfered with, delayed or harassed persons desiring to enter the place of business of the plaintiff, or acted in a disorderly manner or caused or encouraged crowds to gather in front of plaintiff's store. Defendants further say that they have not joined with each other or with any other person or persons in any conspiracy whatever. None of the defendants is connected with or exercises any control over the Washington Tribune or has caused or permitted the Washington Tribune to publish any article or news item whatsoever or in any way acted in concert with the Washington Tribune in said publications.

10. Defendants deny the allegations of fact in paragraph 10 of plaintiff's bill.

[fol. 17] 11 and 12. Defendants admit that the relation of employer and employee does not exist between plaintiff and any of them and that the defendants are not engaged in competitive business with plaintiff. Defendants deny the other allegations of fact in paragraphs 11 and 12 of plaintiff's bill and say that the controversy between plaintiff and defendant corporation is a dispute concerning "negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment" as the quoted phrase is used in the Act of March 23, 1932, and that the said controversy is a "labor dispute" within the meaning of that phrase as used in the Act of March 23, 1932. Defendants say further that the discontinuance of the services of Negro clerks in stores of plaintiff's is a matter in dispute between plaintiff and defendants.

13. Defendants say that the matters alleged in paragraph 13 of plaintiff's bill are not allegations of fact and that defendants ought not be required to make answer thereto, and therefore, defendants neither admit or deny such allegations but will require strict proof thereof insofar as may be material to this cause.

Wherefore, having answered fully the exigencies of plaintiff's bill of complaint, the defendants deny that plaintiff is entitled to the injunction prayed for or to any other relief, and pray judgment that said bill of complaint may be dis-

missed and that plaintiff take nothing by his suit, and that defendants may go hence without costs.

The New Negro Alliance, Inc., by William H. Hastie, Administrator. Harry A. Honesty. B. V. Lawson, Jr., and William H. Hastie, Esquire, in proper person, Attorneys for Defendants.

Duly sworn to by Wm. H. Hastie and Harry Honesty. Jurat omitted in printing.

[fol. 18] IN UNITED STATES DISTRICT COURT

MEMORANDUM OPINION—Filed June 19, 1936

* * * * * * *

The question presented is one of considerable importance. For a long time we have faced a sort of warfare between groups that operate industry, between those who have the ownership of the business, and those who labor in industry. Argument among themselves and struggle and contest among them are still going on. Strikes, boycotts, picketing, lockouts and blacklists have been weapons of this industrial warfare. The situation has resulted in many laws being passed designed to aid peace and order in this most disturbed part of the social life of the country.

Here it is suggested that it is proper and lawful for this kind of contest to be adopted by other groups not directly interested in any way in the industry or business itself.

There are three sources of many of the disorders that have existed in the world for centuries. One has been sectionalism. Different parts of a country may have prejudices against each other; and the same situation may exist between neighboring states.

Another has been religious prejudice. Countless difficulties have arisen among religious groups.

Another source of difficulty lies in racial prejudicies. Not necessarily different races, but also among groups of different descent, such as Germans and Frenchmen, Jews and Gentiles.

These prejudices arising out of sectionalism, religion and race have given rise to all kinds of misfortunes and disasters, revolutions and many of the evils that nations have had to deal with.

Fortunately for us in this country, for a long time we have [fol. 19] been able to get along in an orderly way so far as sectional, religious and race prejudices are concerned. We have been able to get along very peaceably and harmoniously.

As suggested to counsel this morning, let us take one of our neighbors who lives out at Takoma Park, for instance, A Seventh Day Adventist, who runs a shop and business out there, and prefers to employ men of his own denomination. He uses his right to employ whom he pleases. His contract is between him and his employee. Now, suppose the Methodists in the neighborhood form an organization and say, "We are going to boycott you unless you agree to employ our people in your shop instead of your own. We will close up your business. We will march our pickets up and down before your shop and tell people not to have anything to do with you."

We can at once see that that would engender a great storm center in the neighborhood, or prejudice and trouble likely to lead to disturbance and conflict, and therefore it would be of vital concern to the public.

Let such a scheme be carried out by religious denominations with interference in and coercion through picketing of individual business generally and what a great zone of disturbance and difficulty would be created.

The same in the case of sectionalism. We do not have much of that left in this country, but we used to have a lot of it; and we might find in this city, for example, many people from the South who could band together and say, "We are going to make every business man in this city employ nobody but Southern people. We will picket and boycott every place of every man unless he agrees to hire southern people."

What would be the inevitable result of such combinations of people to coerce others in matters with respect to which they have no right to interfere.

It is the same with races. Should the white people say to the man who employs colored help in his shop, "You must put white men in there," and put pickets out to parade up and down to see that these colored employees are turned out and white people are employed in their place?

If we reverse that illustration, and suppose that a group of colored men say, "We are going to picket and to boycott

you unless you turn out your white employees or unless you [fol. 20] cease hiring them and employ colored people", that can only tend to lead to the same kind of trouble, the same kind of race disturbances, difficulties and disasters. It seems to me it is clearly along the wrong line—such combinations of people that are trying to interfere by coercion with the business of somebody else.

Of course nobody can make somebody else deal with him. Everybody has a right to deal where he pleases. He does not have to deal with a man for any reason. He may not like his eyes or his clothes or his name or his race. That is his business.

But it is a different thing when combinations are formed for the purposes of coercing people as to how they shall operate their business.

So I think it would be very unfortunate if this zone of trouble should be extended from the economic zone in which we are already having so much trouble, into the sectional or religious or racial zones.

I do not believe that the laws that relate to labor disputes have any application to this case. I do not think there is any analogy between the zones. They are entirely separate fields; and for that reason I think that not only does the law not apply, but the citations of authorities that have been made with respect to labor controversies have no analogy here. We must all work for better advancement all along the line. That cannot be achieved through any particular group of this kind trying to impose restraints or to interfere by coercion in the conduct of the business of other citizens.

I think the injunction ought to be granted in this case, and I will sustain the bill on the authority of the King case (266 Fed. 257, 260), and the Beck case (42 L. R. A., 407). You can, of course, take the case to the Court of Appeals. It may be well to have that court's view in this case to help us all have a clearer conception of just what the rights and duties of citizens are with respect to matters of this kind.

Joseph W. Cox, Justice.

Orally announced June 19th, 1936.

[fol. 21] IN UNITED STATES DISTRICT COURT

PERMANENT INJUNCTION—Filed June 24, 1936

* * * * * * *

This cause came on to be further heard at this term, upon the Bill of Complaint and the Answer thereto, and having been fully argued and considered, and it appearing to the satisfaction of the Court that unless permanently enjoined, the Defendants, herein, their officers, agents, servants, employees, their attorneys and those in active concert or participating with them, will unlawfully picket or cause to be picketed or patrolled premises occupied by the Plaintiff Corporation, known as 1936 Eleventh Street, Northwest, in the District of Columbia, and other of the stores occupied by the Plaintiff Corporation herein in the transaction of its business, and will by inducements, threats, intimidation or by actual or threatened use of force, dissuade, prevent, hinder, or interfere with persons desiring or intending to enter the places of business operated by Plaintiff Corporation from entering into the same, and will threaten to use, or actually use physical force against the customers, prospective customers, agents, or employees of the Plaintiff, and will damage or destroy or threaten to damage or dest*o*ry the physical property of the Plaintiff and will cause unlawful and disorderly gatherings and assemblies, or will do or threaten to do said acts or any of them as a consequence of which the lives and health of persons in public highways, the Plaintiff's officers, employees, agents, and customers and the Plaintiff's property will be endangered and the ill will so aroused in the public mind will be such as to cause immediate and irreparable injury, loss and damage to the Plaintiff Corporation, It is by the Court this 24th Day of June, A. D. 1936:

Adjudged, Ordered and Decreed that the Defendants, the New Negro Alliance, Inc., William H. Hastie, and Harry A. Honesty, their officers, agents, servants, employees, attorneys and those in active concert or participating with them, be, and they hereby are, permanently and finally restrained and enjoined from:

[fol. 22] 1. Picketing or patrolling, or causing to be picketed or patrolled any and all of the stores and premises occupied by plaintiff;

2. Boycotting or causing or urging other persons or organizations by threats to boycott or to refrain from transacting business with Plaintiff;

3. In any manner, whether by inducements, threats, intimidations, or by the actual or threatened use of physical force, preventing or hindering persons who desire or intend to enter the places of business or any of them of the Plaintiff from entering into the same or from transacting business with the Plaintiff;

4. Destroying or damaging, or threatening to destroy or damage any of the physical property belonging to or under the control of the Plaintiff herein;

5. Doing or threatening to do any or all of the foregoing acts or things, whether individually or in concert with each other, or with others, and from aiding, abetting, assisting, or advising other persons to do or threaten to do said acts or any of them.

And it is Further Ordered and Decreed that the undertaking heretofore given by the Plaintiff herein in the sum of One Thousand Dollars ($1,000), conditioned upon the payment of such costs and damages as may be incurred or suffered by any party who may be found to be wrongfully enjoined hereby, be and the same is hereby continued in full force and effect.

Joseph W. Cox, Justice.

Seen: A. Coulter Wells, Attorney for Plaintiff; William H. Hastie, Attorney for Defendants.

RECITAL AS TO EXCEPTION AND APPEAL

To the above final judgment, decree and injunction the defendants, in open court, duly except, and note their appeal to the United States Court of Appeals for the District of Columbia and appeal bond is fixed in the sum of $100 or in lieu thereof $50 in cash.

Joseph W. Cox, Justice.

[fol. 23] MEMORANDUM

July 13, 1936. Bond ($100) on appeal approved and filed.

IN UNITED STATES DISTRICT COURT

ASSIGNMENTS OF ERROR—Filed July 14, 1936

* * * * * * *

Now come the defendants and assign for review to the United States Court of Appeals for the District of Columbia on appeal in the above-entitled cause the following errors committed by the trial court:

1. The court erred in finding actual or threatened interference with plaintiff or its customers by defendants through force, threats, disorderly assemblage and destruction of property.

2. The court erred in ruling in effect that the provisions of the Act of March 23, 1932, concerning the issuance of injunctions in cases involving labor disputes are not applicable to this case.

3. The court erred in ruling in effect that as a matter of general law the acts of peaceful picketing and patrolling admitted by defendants' answer are unlawful.

4. The court erred and denied to the defendants their Constitutional rights of free speech and personal liberty in restraining them from boycotting plaintiff's business.

5. The court erred in issuing a permanent injunction restraining the defendants from picketing and patrolling in the vicinity of plaintiff's places of business and from boycotting plaintiff's business.

6. The court erred in failing to dismiss plaintiff's bill.

B. V. Lawson, Jr., William H. Hastie, Attorneys for Defendants.

Service of copy acknowledged this 13th day of July, 1936.

A. Coulter Wells, Attorney for Plaintiff.

[fol. 24] IN UNITED STATES DISTRICT COURT

DESIGNATION OF RECORD—Filed July 14, 1936

* * * * * * *

The clerk will please prepare a transcript of record to be transmitted to the United States Court of Appeals for the District of Columbia pursuant to the appeal taken in the above entitled cause and include therein the following:

1. The bill of complaint
2. The answer
3. The permanent injunction with notation of appeal
4. The assignments of error
5. This designation

Wm. H. Hastie, B. V. Lawson, Jr., Attorneys for Defendants.

Service of copy acknowledged this 13th day of July, 1936.

A. Coulter Wells, Attorney for Plaintiff.

IN UNITED STATES DISTRICT COURT

ADDITIONAL DESIGNATION OF RECORD—Filed July 16, 1936

* * * * * * *

Now comes the Plaintiff, Sanitary Grocery Company, Inc., a corporation, appellee in the above entitled cause, by its Attorney of record, A. Coulter Wells, and directs the Clerk in making up the transcript of record on appeal in said cause, to include the following papers and proceedings in addition to those designated by Counsel for the appellant, namely:

1. The opinion of the Court.
2. This Designation.

A. Coulter Wells, Attorney for Plaintiff.

Service of copy acknowledged this — day of July, A. D., 1936.

B. V. Lawson, Jr., of Counsel for Defendant.

[fol. 25] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 26] Monday, April 12th, A. D. 1937.

No. 6836

THE NEW NEGRO ALLIANCE, a Corporation, and William H. Hastie, Individually and as Administrator and as a Member of The New Negro Alliance, a Corporation, and Harry A. Honesty, Individually and as Deputy Administrator and as a Member of The New Negro Alliance, a Corporation, Appellants,

vs.

SANITARY GROCERY COMPANY, INC., a Corporation

The argument in the above entitled cause was commenced by Mr. Belford V. Lawson, Jr., attorney for appellants, and was continued by Messrs. William E. Carey, Jr., and A. Coulter Wells, attorneys for the appellee, and was concluded by Mr. Belford V. Lawson, Jr., attorney for appellants.

[fol. 27] IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

No. 6836

THE NEW NEGRO ALLIANCE, a Corporation, and William H. Hastie, Individually and as Administrator and as a Member of The New Negro Alliance, a Corporation, and Harry A. Honesty, Individually and as Deputy Administrator and as a Member of The New Negro Alliance, a Corporation, Appellants,

v.

SANITARY GROCERY COMPANY, INC., a Corporation, Appellee

Appeal from the District Court of the United States for the District of Columbia

B. V. Lawson, Jr., of Washington, D. C., for Appellants.

A. Coulter Wells and William E. Carey, Jr., both of Washington, D. C., for Appellee.

Argued April 12, 1937. Decided July 26, 1937

Before Martin, Chief Justice, and Robb, Van Orsdel, Groner and Stephens, Associate Justices

VAN ORSDEL, Associate Justice:

This appeal is from a final order and decree of the District Court of the United States for the District of Colum-

bia, permanently enjoining The New Negro Alliance, a corporation, and two of its officers, William H. Hastie and Harry A. Honesty, from picketing or boycotting retail grocery stores of the appellee, Sanitary Grocery Company, Inc. The case was finally disposed of on bill and answer.

The appellee is a corporation operating a large number of retail grocery stores in the District of Columbia. Appellant The New Negro Alliance is a corporation composed of colored persons, its objects being the mutual improvement of its members and the promotion of civic, educational, benevolent and charitable enterprises. The individual appellants are the administrator and deputy administrator of The New Negro Alliance.

The single question here involved is whether appellants who admit that the relation of employer and employee does not exist between them and the appellee, and that they are not engaged in any competitive business with the appellee, have a legal right to picket and boycott the stores of the appellee for the purpose of compelling it to engage and employ colored persons in the sales positions connected with the operation of its business.

The court below entered a decree restraining the appellants from picketing or boycotting or by inducements or threats or intimidation or the use of physical force from preventing or hindering persons who desire or intend to [fol. 28] enter the place of business of appellee from entering and transacting business with appellee. The bill charges that the appellants had made arbitrary and summary demands that appellee engage and employ colored persons in managerial and sales positions in its store and had written letters to appellee which contained threats of boycotting and ruination of appellee's business and that upon the refusal of appellee to comply appellants, their members, representatives, etc., had unlawfully conspired to picket, patrol, boycott and ruin appellee's business. Specific acts are alleged as follows: picketing in front of the store with signs containing the words—DO YOUR PART! BUY WHERE YOU CAN WORK! NO NEGROES EMPLOYED HERE! —; that these pickets had jostled and collided with persons in front of the store and physically hindered, obstructed and interfered with persons desiring to enter appellee's place of business; that the pickets are disorderly while picketing and attract crowds and when crowds are attracted

encourage them to prevent persons from entering appellee's place of business; that appellants in concert have induced to be published in Washington Negro newspapers notices to the effect that appellee "IS FIRING NEGRO PERSONNEL—ORGANIZATION PLANS TO PICKET UNLESS DEMANDS ARE MET", and again "SANITARY STORE PICKETED BY ALLIANCE FOR REFUSAL TO EMPLOY NEGRO CLERKS", and again, "HOUSEWIVES BEING CANVASSED BY GROUP BUY-WHERE-YOU-CAN-WORK CAMPAIGN CARRIED TO RESIDENTS IN NEIGHBORHOOD"; and again, "that the Alliance is conducting a house-to-house canvass in the vicinity of the new store and residents in the neighborhood are urged to 'buy where you can work'."

The answer denies the conspiracy charged and likewise denies physical coercion or intimidation, and admits that the relation of employer and employee does not exist and likewise admits that the parties are not engaged in competitive business.

Appellants' appeal in this Court is grounded on their claim that peaceful picketing is not illegal.

The legislatures and the courts have gone far in sustaining peaceful picketing where labor disputes are involved. By the rather sweeping Act of March 23, 1932 (47 Stat. 70; Secs. 101-115, T. 29, U. S. C.) the Congress prohibited the federal courts from restraining peaceful picketing in cases involving "labor disputes".

Sec. 13 of the Act (Sec. 113, T. 29, U. S. C.) defines "labor disputes", as comprehended within the terms of the Act, as follows:

"(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or

when the case involves any conflicting or competing interests in a 'labor dispute' (as hereinafter defined) of 'persons participating or interested' therein (as hereinafter defined).

"(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the [fol. 29] same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

"(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee."

We agree with the trial court that the instant controversy does not involve a labor dispute within the statute. In this view the distinction between pickets attempting by verbal persuasion to interfere with the business of and to prevent dealing with the establishment boycotted, and pickets silently displaying cards bearing inscriptions intended to accomplish the same object, is of little importance, since both constitute an interference not only with the business boycotted but with the public use of the street. Its purpose in either case when induced by concerted action on the part of a great mass of people is so to interfere with the business of appellee as to compel it to surrender its free right to choose its employees and to conduct its business in whatever lawful manner it may elect. These are rights of which it cannot be deprived under the facts and circumstances here disclosed.

The tendency of the picketing and the action taken to make it effective disclosed in this case is to deter peaceful citizens, both men and women, from entering the appellee's place of business, and to deprive them of their lawful rights. To say under such circumstances that the picket consists of nothing more than a peaceful endeavor to prevent customers from entering the boycotted place is to make a statement at

variance with the facts. Cf. Truax v. Corrigan, 257 U. S. 312.

With the admission of appellants that there is no relation of employer and employee existing, and that appellants are not engaged in a competitive business with appellee, the case narrows down to whether or not appellants come within subparagraph (c) of the above-quoted statute, and in conducting this picketing are attempting to negotiate, fix, maintain, change or arrange terms or conditions of employment. As we have said, we think that the statute will not admit of so broad a construction. Every person conducting a legitimate business is entitled to select his own employees. When employees are selected and become engaged in the business, then any differences which may arise between the employer and employee, or any organization in which the employee may be a member, may come within the provisions of the statute, but until such relation becomes established no ground exists for what may be called a labor dispute. If appellants are upheld in picketing in this case, they might picket any private residence which employed white rather than negro servants. The illustration indicates the extreme to which the contention of the appellants, if upheld, might be carried.

We are clearly of the opinion that this is not a labor dispute. It is a racial dispute in which appellants have admittedly confederated together to impose on appellee definite terms in the employment of its help. In A. S. Beck Shoe Corporation v. Johnson, 274 N. Y. S. 946, an association of negroes picketed stores of the shoe corporation, bearing [fol. 30] signs reading, "An Appeal. Why spend your money where you can't work? This is foolish. Stay out. Citizens League for Fair Play." These signs were similar to the placards carried by the pickets in the instant case. The court in that case said:

"The controversy here is not a labor dispute. The defendants do not constitute a labor union or a labor organization of any kind. They do not compose, nor are they all members, of any single trade or class of trades. Their demands are not connected with any one industry. The questions about which they are now picketing have no connection with wages, hours of labor, unionization, or betterment of working conditions.

"It is solely a racial dispute. It is born of an understandable desire on the part of some of the negroes in this community that the stores in their neighborhood where they spend their money should employ a percentage of negro help. Their exclusive concern is that a certain number of white persons be discharged in order to make place for members of their own race.

"* * * The acts of the defendants are irreparably injurying the plaintiff's business. Not only do they tend to keep prospective colored customers out of the store of the plaintiff, but they must necessarily have the effect of keeping out prospective white customers also. The purpose of the defendants in having members of one race discharged in order to employ the members of another race will not justify this direct damage to the plaintiff in the conduct of its business."

The court in that case was considering a situation identical with that here presented, and the reasoning of the court in its opinion we regard as sound.

In a case analogous to the instant case, Green v. Samuelson, 168 Md. 421, there was involved the picketing of stores in a colored section of the City of Baltimore by an organization of negroes similar to the appellant corporation. In that case the Court of Appeals of Maryland, in upholding the issuance of an injunction, said (pp. 425-6, 429):

"So far as we are able to ascertain, this is the first time the question here presented has arisen in an appellate court, and our information is that the case in the court appealed from is the first time it has been presented to any tribunal. About a month after the bill was filed in the Circuit Court of Baltimore City a similar bill was filed in New York (*Beck Shoe Corporation* v. *Johnson*, 153 Misc. 363, 274, N. Y. S. 946), and both chancellors declined to regard the question as a labor dispute, and, on the ground of public policy, granted the relief prayed by the bills for injunction.

* * * * * * *

"In our opinion, this is a racial or social question, and as such, the rules heretofore announced and applied to labor disputes have no application, and the things complained of were properly enjoined, * * *."

However commendable the purposes of the appellants may be in attempting to improve the condition of their race, they are not, in carrying out such purposes, justified in ignoring the rights of the public and the property rights of the owner of the business which they attempt to boycott. To sustain such action on the part of an organization established merely to advance the social standing of its race would be in complete disregard of fundamental principles of public policy, and cannot be supported upon any principle of law, equity or justice.

The decree is affirmed.

Josiah A. Van Orsdel, Associate Justice.

[fol. 31] STEPHENS, Associate Justice, dissenting in part, concurring in part:

I dissent from the dictum of the majority that no labor dispute exists within the meaning of the Norris-LaGuardia Act [47 Stat. 70] until differences arise between the employer and the employee or any organization in which the employee may be a member. Cinderella Theater Co. v. Sign Writers' Local Union, 6 F. Supp. 164; Dean v. Mayo, 8 F. Supp. 73; cf. Levering & Garrigues Co. v. Morrin, 71 F. (2d) 284, certiorari denied 293 U. S. 595; see Legislation Note, The Norris-LaGuardia Act: Cases Involving or Growing Out of a Labor Dispute (1937), 50 Harv. L. Rev. 1295. The dictum would exclude from the operation of the Norris-LaGuardia Act a dispute between two unions as to the right to represent employees, the employer being indifferent as to the result, and would also exclude from the operation of the Act a dispute as to unionization between a union and an employer of exclusively non-union labor. Neither of such types of disputes is involved in the instant case, and we should therefore not even in dictum rule concerning them.

I dissent from the affirmance of that part of the decree which as worded enjoins the appellants from boycotting the appellee. I think it was erroneous for the trial court in effect to order the appellants to trade at the appellee's store.

I concur with the majority in the conclusion that in the instant case the Norris-LaGuardia Act does not prevent the issuance of an injunction. The dispute in the instant case is not, I think, a labor dispute within the definition given to that phrase in the Norris-LaGuardia Act—even under

the most liberal construction of that Act. E. g., Cinderella Theater Co. v. Sign Writers' Local Union, Dean v. Mayo, Levering & Garrigues Co. v. Morrin, all supra. See Legislation Note, supra, 1301 n. 32. Therefore the trial court had jurisdiction to issue an injunction.

I feel bound to concur further with the majority in the conclusion that in the instant case the injunction was properly issued. I do so with reluctance for I think courts should be cautious indeed in limiting application of the general proposition so happily stated by Justice Hofstadter, in Julie Baking Co. v. Graymond, 152 Misc. 846, 274 N. Y. Supp. 250:

> The right of an individual or group of individuals to protest in a peaceable manner against injustice or oppression, actual or merely fancied, is one to be cherished and not to be proscribed in any well-ordered society. It is an essential prerogative of free men living under democratic institutions. And it is salutary for the state, in that it serves as a safety valve in times of stress and strain. * * * [152 Misc. at 847; 274 N. Y. Supp. at 251-252.]

But this proposition was uttered in a case which though it did not involve a labor dispute also did not involve a racial dispute. It was a dispute between a neighborhood organization and a bakery concerning alleged extortionate prices.

How far a right may be exercised, or how far it is proper to limit its exercise, is a question of policy and one which, however delicate, must nevertheless be determined by courts according to their best judgment—in the absence of some controlling statute The questions of policy involved in picketing in labor disputes have been thought by Congress, [fol. 32] in the Norris-LaGuardia Act, and by many courts, to operate against restraint of peaceful picketing.[1] Peace-

---

[1]The Norris-LaGuardia Act denies jurisdiction to enjoin "Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence." 47 Stat. 71. And see the following decisions: Senn v. Tile Layers' Protective Union, U. S. Sup. Ct. (May 24, 1937) 4 U. S. L. Week 1211; Iron Molders' Union v. Allis-Chalmers Co., 166 Fed. 45; Exchange Bakery & Restaurant, Inc. v. Rifkin, 245 N. Y. 260, 157 N. E. 130.

ful picketing has been recognized as legal, however, not upon the theory that it is not an invasion of another's right but upon the theory that it is a justifiable invasion. As said by Mr. Justice Holmes in Aikens v. Wisconsin, 195 U. S. 194, 204:

> * * * prima facie, the intentional infliction of temporal damage is a cause of action, which, as a matter of substantive law * * * requires a justification if the defendant is to escape.

And, as said the same author in Privilege, Malice, and Intent (1894), 8 Harv. L. Rev. 1, 9:

> * * * when a responsible defendant seeks to escape from liability for an act which he had notice was likely to cause temporal damage to another, and which has caused such damage in fact, he must show a justification. The most important justification is a claim of privilege. In order to pass upon that claim, it is not enough to consider the nature of the damage, and the effect of the act, and to compare them. Often the precise nature of the act and its circumstances must be examined. It is not enough, for instance, to say that the defendant induced the public, or a part of them, not to deal with the plaintiff. * * * in all such cases the ground of decision is policy; and the advantages to the community, on the one side and the other, are the only matters really entitled to be weighed. * * *

The problem of policy has also been well put thus:

> The truth to be dealt with is that every measure upon which a labor union relies for acceptance of its demands, involves the curtailment of some temporal interest of employer, non-union employee, and frequently the public. * * *
>
> * * * * * * *
>
> The damage inflicted by combative measures of a union—the strike, the boycott, the picket—must win immunity by its purpose. But neither this nor any formula will save courts the painful necessity of deciding whether, in a given conflict, privilege has been overstepped. The broad questions of law—what are permissible purposes and instruments for damage,—and the intricate issues of fact to which they must be applied, together constitute the area of judicial discretion within which diversity of opinion finds ample scope. * * * [Frankfurter and Greene: The Labor Injunction (1930), at 24, 25.]

One of the main factors of policy which must be weighed in judicial determination of whether an injunction shall issue to restrain picketing is the probability of violence in the particular circumstances involved. The decisions legitimatizing peaceful picketing in labor disputes have been based in part upon the proposition that picketing can be carried on in such manner as not imminently to endanger the public peace and safety, and in part upon the further proposition that the likelihood of violence in picketing in labor disputes is not sufficient to overweigh the public interest in picketing as one means of accomplishing improvement of labor conditions. In the instant case, the factor of the likelihood of violence operates I think to require an opposite conclusion. The dispute here is in essence and emphasis not a labor dispute but a racial dispute. True, it is a racial dispute concerning hiring, and has thus in a broad [fol. 33] sense to do with a question of labor; but this does not make it less racial in essence and in insistence. Violence in racial disputes is, as a matter of common knowledge, highly probable. Therefore, as a matter of public policy, picketing in such disputes cannot be justified, even though in its inception, as in the instant case, it is actually peaceful.

[fol. 34] Monday, July 26th, A. D. 1937

April Term, 1937

No. 6836

The New Negro Alliance, a Corporation, and William H. Hastie, Individually and as Administrator and as a Member of The New Negro Alliance, a Corporation, and Harry A. Honesty, Individually and as Deputy Administrator and as a Member of The New Negro Alliance, a Corporation, Appellants,

vs.

Sanitary Grocery Company, Inc., a Corporation

Appeal from the Supreme Court of the District of Columbia

This cause came on to be heard on the transcript of the record from the District Court of the United States for

the District of Columbia, formerly Supreme Court of the District of Columbia, and was argued by counsel.

On consideration whereof, It is now here ordered, adjudged, and decreed by this Court that the decree of the said Supreme Court, now District Court, in this cause be, and the same is hereby, affirmed with costs.

Per Mr. Justice Van Orsdel.

July 26, 1937.

Dissenting opinion per Mr. Justice Stephens.

[fol. 35] IN THE COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

No. 6836

THE NEW NEGRO ALLIANCE et al., Appellants,

vs.

SANITARY GROCERY COMPANY, INC., Appellee

DESIGNATION OF RECORD

The clerk will please, in preparation of the transcript of record on Petition for Writ of Certiorari to the Supreme Court of the United States, include therein:

1. Record.
2. Minute entry of the argument.
3. Opinion.
4. The decree.
5. Copy of this Designation.
6. Clerk's certificate.

B. V. Lawson, Jr., Thurman L. Dodson, Edward P. Lovett, Attorneys for Appellants.

Service of copy acknowledged this 13th day of Sept., 1937.

A. Coulter Wells, Attorney for Appellee. W.

[fol. 36] [Endorsed:] No. 6836. In the Court of Appeals for the District of Columbia. The New Negro Alliance et al., Appellants, vs. Sanitary Grocery Company, Inc., Ap-

pellee. Designation of Record. United States Court of Appeals for the District of Columbia. Filed Sep. 14, 1937. Moncure Burke, Clerk. B. V. Lawson, Jr., Attorney for Appellants, 2001 11th St., N. W., Po. 5725.

[fol. 37] UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

I, Moncure Burke, Clerk of the United States Court of Appeals for the District of Columbia, hereby certify that the foregoing printed and typewritten pages numbered from 1 to 36, inclusive, constitute a true copy of the transcript of the record and proceedings of the said Court of Appeals as designated by counsel for appellants in the case of The New Negro Alliance, a Corporation, and William H. Hastie, Individually and as Administrator and as a Member of The New Negro Alliance, a Corporation, and Harry A. Honesty, Individually and as Deputy Administrator and as a Member of The New Negro Alliance, a Corporation, Appellants, vs. Sanitary Grocery Company, Inc., a Corporation, No. 6836, April Term, 1937, as the same remain upon the files and records of said Court of Appeals.

In Testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 14th day of September, A. D. 1937.

Moncure Burke, Clerk of the United States Court of Appeals for the District of Columbia. (Seal United States Court of Appeals for the District of Columbia.)

[fol. 38] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 22, 1937

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 41,992. U. S. Court of Appeals, District of Columbia. Term No. 511. The New Negro Alliance et al., petitioners, vs. Sanitary Grocery Co., Inc. Petition for a writ of certiorari and exhibit thereto. Filed October 16, 1937. Term No. 511, O. T., 1937.